

## **3-2.000**

# **UNITED STATES ATTORNEYS, ASSISTANT UNITED STATES ATTORNEYS, SPECIAL ASSISTANTS, AND AGAC**

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### **3-2.100 United States Attorneys**

The United States Attorney serves as the chief law enforcement officer in each judicial district and is responsible for coordinating multiple agency investigations within that district.

There are currently 93 United States Attorneys stationed throughout the United States, Puerto Rico, Guam and the Northern Marianas. One United States Attorney is assigned to each judicial district with the exception of Guam and the Northern Marianas, where a single United States Attorney serves in both districts.

### **3-2.110 History**

The Office of the United States Attorney was created by the Judiciary Act of 1789 which provided for the appointment "in each district of a meet person learned in the law to act as attorney for the United States . . . whose

duty it shall be to prosecute in each district all delinquents for crimes and offenses, recognizable under the authority of the United States, and all civil actions in which the United States shall be concerned . . ." 1 Stat. 92. Initially, United States Attorneys were not supervised by the Attorney General (1 Op. Att'y Gen. 608) but Congress, in the Act of August 2, 1861, (Ch. 37, 12 Stat. 185) charged the Attorney General with the "general superintendence and direction duties . . ." While the precise nature of the superintendence and direction was not defined, the Department of Justice Act of June 22, 1870 (Ch. 150, 16 Stat. 164) and the Act of June 30, 1906 (Ch. 39, 35, 34 Stat. 816) clearly established the power of the Attorney General to supervise criminal and civil proceedings in any district. *See* 22 Op. Att'y Gen. 491; 23 Op. Att'y Gen. 507. Today, as in 1789, the United States Attorney retains, among other responsibilities, the duty to "prosecute for all offenses against the United States." *See* 28 U.S.C. Sec. 547(1). This duty is to be discharged under the supervision of the Attorney General. *See* 28 U.S.C. Sec. 519.

### **3-2.120 Appointment**

United States Attorneys are appointed by the President with the advice and consent of the Senate for a four-year term. *See* 28 U.S.C. Sec. 541. Upon expiration of this term, the United States Attorney continues to perform the duties of the office until a successor is confirmed. United States Attorneys are subject to removal at the will of the President. *See Parsons v. United States*, 167 U.S. 314 (1897).

### **3-2.130 Residence**

All United States Attorneys must reside in the district of their appointment except that in the District of Columbia and the Southern and Eastern Districts of New York, they may reside within 20 miles of their district. These provisions do not apply to a United States Attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. *See* 28 U.S.C. Sec. 545.

### **3-2.140 Authority**

Although the Attorney General has supervision over all litigation to which the United States or any agency thereof is a party, and has direction of all United States Attorneys, and their assistants, in the discharge of their respective duties (28 U.S.C. Secs. 514, 515, 519), each United States Attorney, within his/her district, has the responsibility and authority to: (a) prosecute for all offenses against the United States; (b) prosecute or defend, for the government, all civil actions, suits, or proceedings in which the United States is concerned; (c) appear on behalf of the defendants in all civil actions, suits or proceedings pending in the district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury; (d) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law unless satisfied upon investigation that justice does not require such proceedings; (e) make such reports as the Attorney General shall direct. 28 U.S.C. Sec. 547.

By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United States is a party. They are the principal federal law enforcement officers in their judicial districts. In the exercise of their prosecutorial discretion, United States Attorneys construe and implement the policy of the Department of Justice. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of federal law enforcement.

### **3-2.150 Absence from Office -- Acting United States Attorney**

Each United States Attorney is authorized to designate any Assistant United States Attorney in his/her office to perform the functions and duties of the United States Attorney during his/her absence from office, and to sign all necessary documents and papers as Acting United States Attorney while performing such functions and duties. *See* 28 C.F.R. Sec. 0.131.

### **3-2.160 Vacancy in Office -- Court Appointment**

The District Court for a district in which the office of the United States Attorney is vacant may appoint a United States Attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court. *See* 28 U.S.C. Sec. 546.

### **3-2.170 Recusals**

If a conflict of interest exists because a United States Attorney has a personal interest in the outcome of the matter or because he/she has or had a professional relationship with parties or counsel, or for other good cause, he/she should recuse himself/herself. The requirement of recusal does not arise in every instance in which he/she has had a professional relationship with parties or counsel, but only where a conflict of interest exists.

Where there is the appearance of a conflict of interest, the United States Attorney should consider a recusal.

A United States Attorney who recuses should promptly notify the appropriate division and the Legal Counsel's office of the Executive Office for United States Attorneys at (202) 514-4024. In exceptional cases, the recusal of the United States Attorney may require the recusal of all members of that office. A United States Attorney who recuses should discuss the question of recusal of the members of the office with the appropriate division or the Executive Office for United States Attorneys. If appropriate, the division will assume sole responsibility for handling the matter or secure the designation of an attorney as a Special Attorney or Special Assistant to the Attorney General (see USAM 3-2.300) pursuant to 28 U.S.C. Sec. 515 to assume responsibility for handling the matter. *See* USAM 1-4.000 *et seq.*

### **3-2.171 Procedures in Implementing Recusals**

**A. Policy.** Supervision of litigation generally, and criminal investigations in particular, are significant responsibilities vested in the United States Attorneys by the Attorney General. United States Attorneys should determine that a recusal is appropriate in consultation with the Legal Counsel's office, Executive Office for United States Attorneys (EOUSA), and obtain the approval of the Deputy Attorney General's office, as set forth below. Subsequently, United States Attorneys should take steps to ensure that management, supervisory, and reporting responsibilities for a particular matter are transferred to another appropriate official of the Justice Department. Appropriate Assistant Attorneys General should also be consulted on the necessity of the recusal and its scope.

Any recusal by a United States Attorney must be complete. Once it has been determined that a United States Attorney must be recused from a particular matter, he or she should not only be recused from decision-making responsibility in that matter, but also should not review any status reports on the progress of the matter.

To ensure effectiveness of the recusal, the file should be marked in a distinguishing manner and an entry made within the case management system. Should the case enter a grand jury phase, the judge supervising the

grand jury should be notified of the recusal. When the case reaches court, the assigned judge should also be notified.

**B. Responsibility of the Deputy Attorney General.** The Deputy Attorney General shall supervise the official designation of an Acting United States Attorney or the official responsible for the matter (i.e., the appropriate Assistant Attorney General), and approve the United States Attorney or office-wide recusal.

**C. Interim Supervision.** When only the United States Attorney will be recused, the principal Assistant United States Attorney shall serve as Temporary Acting United States Attorney on the case until the Deputy Attorney General designates an Acting United States Attorney for the case. Should the principal Assistant also be recused, the next ranking supervisor shall serve as Temporary Acting United States Attorney. When it appears an office-wide recusal may be necessary, the highest-ranking supervisor without a conflict of interest in the matter (below the United States Attorney level) shall serve as Temporary Acting United States Attorney.

**D. Designation of an Acting United States Attorney.** In designating an Acting United States Attorney, the Deputy Attorney General will consider whether supervisory responsibility for the matter should remain with the principal Assistant, or whether such supervisory responsibility (or the matter in its entirety) should be transferred to a United States Attorney from another district or to an Assistant Attorney General.

Where both the United States Attorney and the principal Assistant are recused from the case, the next senior supervisor will be named as the Acting United States Attorney. Recusal of the senior management of a United States Attorney's office, but not the line Assistants, will not occur in the absence of compelling reasons, and should in any event be accompanied by a transfer of supervisory functions to either a United States Attorney from another district or an Assistant Attorney General, as determined by the Deputy Attorney General.

If the investigation in question involves a significant feature, such as a prominent target, an international target, or a crime of national notoriety, the transfer of the entire matter to a United States Attorney from another district or an Assistant Attorney General will be given strong consideration. For example, where the United States Attorney is recused in an investigation involving alleged public corruption and a significant public figure or political official appears to be implicated, the Assistant Attorney General for the Criminal Division should be consulted to determine whether the Public Integrity Section should be brought into the investigation.

**E. Office-wide Recusal.** When it appears that it may be necessary for the entire United States Attorney's office to recuse itself from a matter, please contact EOUSA Legal Counsel's office at (202) 514-4024, before submitting a recusal memorandum (see the EOUSA Resource Manual at 2 for instructions on preparing a recusal memorandum).

The purpose of this contact is to obtain a preliminary determination of whether an office-wide recusal is necessary and of the appropriate office to which the case will be reassigned. After consultation with the Office of the Deputy Attorney General, the Legal Counsel's office will respond to your office regarding the appropriate office to which the case should be reassigned. Please do not contact another United States Attorney's office and ask them to handle the matter before discussing it with EOUSA Legal Counsel's office.

After you have been contacted by EOUSA Legal Counsel's office, please incorporate the recommendation into your recusal memorandum.

For additional information on reporting, see the EOUSA Resource Manual at 3. On the issue of retroactive application, see the EOUSA Resource Manual at 4. The recusal standards are set forth in the EOUSA Resource Manual at 5.

### **3-2.200 Assistant United States Attorneys**

Assistant United States Attorneys are appointed by the Attorney General and may be removed by that official. *See* 28 U.S.C. Sec. 542. The Deputy Attorney General exercises the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of Assistant United States Attorneys. *See* 28 C.F.R. Sec. 0.15. Such authority may be, and has been, delegated to the Director, Executive Office for United States Attorneys.

Authority to appoint Assistant United States Attorneys may be, and has been delegated to the Director, Office of Attorney Personnel Management. Authority to effect reprimands, suspensions, and/or removal for Assistant United States Attorneys may be, and has been, delegated to the Director, EOUSA.

Assistants must reside in the district of their appointment, or within 25 miles thereof. These provisions do not apply to an Assistant United States Attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. *See* U.S.C. Sec. 545(a).

Assistants who are appointed temporarily to fill a vacant United States Attorney position pursuant to 28 U.S.C. Sec. 546, and who are not candidates for permanent appointment by the President as the United States Attorney pursuant to 28 U.S.C. Sec. 541, shall be offered, upon termination, reemployment to the last permanent position held. Reemployment is subject to all conditions of employment currently applicable to Assistant United States Attorneys appointed pursuant to 28 U.S.C. Sec. 542.

### **3-2.210 Authority**

Assistant United States Attorneys are responsible to the United States Attorney for the performance of duties assigned by that official.

### **3-2.220 Recusals**

The same circumstances which require that a United States Attorney recuse himself/herself (*see* USAM 3-2.170) apply to an Assistant United States Attorney. Ordinarily, the fact that an Assistant United States Attorney recuses will not require that the United States Attorney or the office recuse itself and the case or matter may be reassigned to another Assistant. Specific questions should be directed to the Legal Counsel Staff of the Executive Office for United States Attorneys at (202) 514-4024 or the appropriate litigating division.

### **3-2.300 Special Assistants**

Section 543 of Title 28 authorizes the Attorney General to appoint Special Assistants to assist the United States Attorney when the public interest so requires, and to fix their salaries. These Assistants are designated as Special Assistants to the United States Attorney and are appointed for the purpose of assisting in the preparation and presentation of special cases. Their salaries, if any, are a matter of agreement between the Department and the individual, and are fixed at an annual, monthly, per diem, or when-actually-employed rate. Under the appropriate circumstances, a private attorney may receive a Special Assistant appointment pursuant to 28 U.S.C. Sec. 543, with or without compensation, to assist the United States Attorney with specific matters. Such appointments raise ethics and conflict of interest issues that must be addressed. To appoint private attorneys as Special Assistant United States Attorneys pursuant to 28 U.S.C. Section 543, compensated or not, approval is required by EOUSA.

Attorneys employed in other departments or agencies of the federal government may be appointed as Special Assistants to United States Attorneys, without compensation other than that paid by their own agency, to assist

in the trial or presentation or cases when their services and assistance are needed. Such appointments, and appointments of Assistant United States Attorneys from one United States Attorney's office to another, may be made by the United States Attorney requiring their services.

In instances where an entire United States Attorney's Office recuses itself, the Attorney General may, pursuant to 28 U.S.C. Sec. 515, appoint any officer of the Department of Justice, or any attorney specially appointed under law, to conduct any kind of legal proceeding which United States Attorneys are authorized by law to conduct, whether or not such appointee is a resident of the district in which the proceeding is brought. Said appointee specially retained under authority of the Department of Justice is appointed as a Special Assistant or a Special Attorney to the Attorney General and reports directly to the Attorney General or delegee. Such appointments are executed by the Executive Office for United States Attorneys.

### **3-2.400 Division of Responsibility**

The division of responsibility in the Department of Justice between the offices of the United States Attorneys and the legal divisions is determined by statutes, Code of Federal Regulations provisions, Attorney General and Deputy Attorney General directives, and actual practice. It is also extensively discussed in the Manual's various titles.

### **3-2.500 History of the Attorney General's Advisory Committee of United States Attorneys (AGAC)**

The appointment of an Advisory Committee of United States Attorneys to the Attorney General was publicly announced on September 20, 1973, by Attorney General Elliot Richardson. By order dated February 13, 1976, Attorney General Edward Levi formally established the Committee and had its existence and responsibilities set forth in 28 C.F.R., Section 0.10.

### **3-2.520 Members**

The Committee consists of 17 United States Attorneys selected by the Attorney General. They are intended to represent office size, judicial district, issues and diversity. Service on the Committee normally shall not exceed three years. New members are appointed each year to provide for broad representation of United States Attorneys nationwide. The Attorney General selects a chairperson and vice-chairperson. The Committee establishes such subcommittees as it deems necessary to carry out its functions.

### **3-2.530 Functions**

The Advisory Committee has two functions. It gives United States Attorneys a voice in Department policies and advises the Attorney General of the United States.

In advising the Attorney General, the Committee conducts studies and makes recommendations to improve management of United States Attorney operations and the relationship between the Department and the federal prosecutors. It also helps formulate new programs for improvement of the criminal justice system and the delivery of legal services at all levels.

In serving the United States Attorneys, the Committee coordinates the collective efforts of the United States Attorneys with the divisions and agencies of the Department of Justice, and departments and agencies external

to the Department of Justice. It also represents the United States Attorneys with the Department of Justice, other departments and agencies of the government, and occasionally private organizations.

### **3-2.540     Subcommittees**

United States Attorneys who are not members of the Attorney General's Advisory Committee may serve on its subcommittees and working groups. A current listing of Advisory Committee members and Subcommittee members is available from the Executive Office for United States Attorneys at 202-514-4633.